



OLD VALUES - NEW HORIZONS

COMMUNITY DEVELOPMENT

3 No. Lowell Road, Windham, New Hampshire 03087

(603) 432-3806 / Fax (603) 432-7362

www.WindhamNH.gov

Draft Minutes Zoning Board of Adjustment June 14, 2016 7:30pm @ Community Development Department

Mark Samsel, Chairman - present

Mike Mazalewski, Alternate - present

Heath Partington, Vice Chair - present

Kevin Hughes, Alternate - present

Pam Skinner, Secretary - present

Jim Tierney, Alternate - excused

Mike Scholz, Member - excused

Jay Yennaco, Alternate - excused

Bruce Breton, Member - present

Staff:

Dick Gregory, ZBA Code Enforcement Administrator

Andrea Cairns, Minute Taker

Meeting called to order at 7:31p.m. by Chairman Samsel.

Chairman Samsel reviewed the process for the public

Chairman Samsel noted that case numbers 16 and 17 were for the same property. He questioned if the board was comfortable hearing them together and the board agreed that would be appropriate.

Lot 25-G-30 & 40, Case # 16-2016

Applicant Joseph Maynard

Owner-Windham Marblehead Properties LLC & South Fork Properties LLC

Location-36 Marblehead Road

Zoning District-Residence A and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to allow each dwelling area to be less than the required 100 ft. by 100 ft. rectangle development box and less than the required 30,000 sq. ft. of contiguous area, and from **Section 603.1.1** of the Windham Zoning Ordinance to allow multiple dwellings per lot, where only one (1) dwelling per lot is allowed.

Lot 25-G-30 & 40 Case # 17-2016

Applicant Joseph Maynard

Owner-Windham Marblehead Properties LLC & South Fork Properties LLC

Location-36 Marblehead Road

Zoning District-Residence A and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Sections 601.3, 601.1, 601.4.2, 601.4.5** of the Windham Zoning Ordinance to allow the reduction of the WWPD to 25 ft. in the area of units 1 & 2.

Ms. Skinner read Case #16-2016 and Case #17-2016 and abutters list into the record.

Mr. Joe Maynard presented the application. The property is actually two lots that they are merging. It is a project that has been in process since 2015. Originally it was 25 – 55+ age restricted units. The project was not well received by abutters so they worked towards a reasonable request. They have settled on eight condominium units accessed from a 14' private roadway. There will be a cistern and each unit will have sprinklers.

They were before the board because two units along Stonybrook Road are within the WWPDP. In order to develop the road there would be a WWPDP impact. The second aspect deals with the side gradient where they have dredge and fills proposed. The side gradient will be a culvert. They had a wetland scientist, Nancy Rendell, review the project and she provided a letter with her findings (Exhibit A). She felt that keeping the impacts to one location would help the overall water quality on the site.

Mr. Maynard read the five criteria into the record.

Mr. Partington questioned the sections of the ordinance he was requesting relief from. He noted for section 601.3 they generally ask for certain uses. Mr. Maynard felt it was better to set a distance since it would give him more flexibility without having to come back to the board. He was looking for a reduced WWPDP on the sides of the units to be 20' instead of 100' so they could fit septic systems and yards. Mr. Partington questioned why he needed that relief. Mr. Maynard noted it was because houses will be constructed there which is not an allowed use.

Mr. Partington questioned why he would ask for relief from 601.4, which is the general purpose of the ordinance. Mr. Maynard noted the purpose of the ordinance is a buffer to protect the wetlands and he felt it was better to be safe and ask for relief from that section.

Mr. Partington clarified that sections 601.4.2 and 601.4.5 were requests to get the calculation changed. Mr. Maynard indicated that was correct, but only in the areas of buildings one and two. Mr. Partington questioned if the relief would actually be for 200'. Mr. Maynard noted it could potentially be that, and the final calculations would be clearly indicated on the final plat that will be recorded at the registry. He would also reference in the notes, the variance if it was granted.

Mr. Partington questioned if the original 55+ proposal would have required a WWPDP variance. Mr. Maynard noted it would because the road comes in and across the wetlands in the same location.

Mr. Scholz noted that for 601.1 and 601.3 they typically receive requests for a specific use and questioned if he was asking for a blanket relief. Mr. Maynard noted he was but was open to some form of other restrictions.

Mr. Morgan Hollis, Attorney

Mr. Hollis noted that his role in the application was in regard to the variance dealing with lot size, area and frontage. This zone requires frontage for each lot. This project is essentially one lot with eight condo units on it; each will have defined common areas. The approximate footprints will be 40'x80'. The condo units will have no frontage because the access will be a private driveway with each unit having their own smaller driveways. It will start as 20-22' wide and will then narrow to 14' wide. The final design is still up to the planning board.

They've limited it to one access point, which will be a private driveway, not a town road. The proximity to Rock Pond was a sensitivity point to neighbors. Behind the property, there are a lot of

94 neighbors that want as little development as possible who requested that they preserve some land,
95 which lends itself to a cluster development or condominiums with open space. The neighborhood
96 will have the same character as one with single-family homes. They have tried to space the homes
97 fairly well, any impact from closely spaced lots is limited to the internal site.
98

99 Mr. Hollis feels they meet all five criteria and reviewed his points.
100

101 They obtained an appraisal from J. Chet Rogers. LLC, Commercial Real Estate Appraiser from
102 Hollis, NH. He did an analysis of potential impact of this development to surrounding properties.
103 His report (Exhibit B), shows in his opinion there will be no negative effect on the value of
104 surrounding properties.
105

106 Chairman Samsel opened the hearing to the public.
107

108 *Doug Roberts – 15 Canterbury Road*

109 Mr. Roberts is a direct abutter and feels he will be the most heavily impacted. He has been very
110 involved in the project over the last few years. He applauds all involved for reaching out to the
111 community and coming up with a great solution. They have gone from a very high-density complex
112 to eight units thus resulting in less impact to Rock Pond, the aquifer on Canterbury Road, which is
113 very sensitive, and property values. He would ask the board to consider how far they have come. On
114 behalf of the residents on Canterbury Road, they unanimously support this proposal.
115

116 *Wayne Morris – President of Rock Pond Improvement Association*

117 He has been involved in the project from the beginning. Mr. Morris noted as the process moves
118 forward, they will ask for covenants that could be placed on the project for drainage, and built in
119 controls for fertilizers. When they look at the difference in the two plans, the impacts to WWPD are
120 probably similar for the road. They had discussions on how to minimize the impact. He noted the
121 wetland scientist recommended a 25' no cut buffer. He would hope that would stay as a condition of
122 approval.
123

124 *Mike Fiore – 27 Emerson Road*

125 Mr. Fiore is also part of the Rock Pond Improvement Association. He noted the association was
126 looking for something they could get behind. This revised project is reasonable and something they
127 could support.
128

129 *Bruce Real – 34 Marblehead Road*

130 The residents of Marblehead Road support the development and would like to ask for acceptance of
131 the variance.
132

133 Mr. Maynard added that in general the board has heard from the neighbors and how they have
134 worked hard towards a mutual agreement. They feel it is a very reasonable use.
135

136 Mr. Partington clarified exactly where the 25' no cut buffer would be located. Mr. Maynard noted it
137 would be 25' from the proposed Stonybrook Road to the existing rock wall and run east and west of
138 units one and two.
139

140 Mr. Scholz clarified whether 50 Sharon Road was being included. Mr. Maynard noted it was not
141 part of this proposal. They plan to grant an easement or subdivide it off and donate it to the Rock
142 Pond Association.

Ms. Skinner noted there were two letters from the Conservation Commission. The letter dated 5/26/16 stated they had no issues with the plan. The letter dated 6/9/16 had no further comment.

MOTION: Mr. Breton made a motion to go into deliberative.

Mr. Scholz seconded the motion.

No discussion

Vote 5-0

Motion carries

Mr. Scholz noted there was no letter from TRC in their packets. Mr. Maynard noted they met that morning; he had asked the chief to send a letter but none had been created yet.

Chairman Samsel stated he appreciates the work that everyone involved has put into the proposal. He wants to remind everyone that their determination is different from the Planning Board because they have legal points they need to consider.

Lot 25-G-30 & 40 Case # 17-2016

Mr. Partington has issues with granting relief for 601.1, 601.4.2 and 601.4.5. He does not feel they meet the criteria for granting the variance for all of those. When he looks at 601.3, they could grant the variance for WWPDP, specifically the houses and their driveways.

Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five criteria for 601.3.

Mr. Scholz questioned what the impact would be if they didn't grant relief to 601.4.2 and 601.4.5. Mr. Partington noted WWPDP could be increased by 100' so they would be granting the use of the structures in WWPDP. He feels they should leave the calculations the way they are and allow the structures and driveways.

Mr. Scholz felt that 601.1 was not needed and they didn't meet the criteria for that but did meet the criteria for 601.3. Mr. Breton and Ms. Skinner agreed.

Members discussed whether they should simply state that relief from 601.1, 601.4.2 and 601.4.5 was not needed or if it should be included in a motion.

Attorney Morris made a point of order.

MOTION: Mr. Breton made a motion to go back into public session for point of order.

Mr. Scholz seconded the motion.

No discussion

Vote 5-0

Motion carries

Attorney Morris requested to withdraw the application for points 601.1, 601.4.2 601.4.5.

MOTION: Mr. Breton made a motion to go back into deliberative

Mr. Scholz seconded the motion.

No discussion

Vote 5-0

Motion carries

MOTION: Mr. Breton made a motion to accept Attorney Morris' withdrawal for points 601.1, 601.4.2 601.4.5

Ms. Skinner seconded the motion.

Discussion: Mr. Partington and Mr. Scholz felt it was highly unlikely for them to accept a withdrawal after going into deliberative and would not vote in favor. Chairman Samsel agreed.

Mr. Breton withdrew his motion and suggested they deny without prejudice.

MOTION: Mr. Scholz made a motion to deny without prejudice the variance from Sections 601.1, 601.4.2, 601.4.5 of the Windham Zoning Ordinance.

Mr. Breton seconded the motion.

No discussion

Vote 4-1

Motion carries

MOTION: Mr. Breton made a motion to approve the variance request from Section 601.3 of the Windham Zoning Ordinance conditional upon a 25' no cut buffer between the proposed Stonybrook Road to the existing rock wall and run east and west of the two homes.

Mr. Scholz seconded the motion.

Discussion: Mr. Scholz noted the two houses and the driveways are in the relief, but he doesn't feel the yards were covered.

Mr. Breton withdrew his motion.

MOTION: Mr. Partington made a motion to approve the variance request from Section 601.3 of the Windham Zoning Ordinance for the two homes and the two associated driveways with the conditional that a 25' no cut buffer be maintained between the proposed road and the stone wall to the south and run east and west of the two homes as presented.

Mr. Breton seconded the motion.

No discussion

Vote 5-0

Motion carries.

Chairman Samsel reminded the applicant there is a 30-day appeal period.

Lot 25-G-30 & 40, Case # 16-2016

Chairman Samsel noted it is very rare to get such strong support from neighbors in crafting positive changes He thanks everyone who has participated. He feels the five points have been met.

Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five criteria.

Mr. Scholz requested that the number of units be referenced in the approval. He agreed the five criteria had been met. Mr. Breton and Ms. Skinner agreed.

MOTION: Mr. Scholz made a motion to approve the variance request from Section 603.1.1 of the Windham Zoning Ordinance to allow 8 dwelling units on a single lot in a condominium form of ownership.

Mr. Breton seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel reminded the applicant there is a 30-day appeal period.

Lot 17-M-38, Case # 18-2016

Applicant-Joseph Maynard

Owner-Judy Denardo

Location-8 York Road

Zoning District-Residence A and Cobbett's Pond and Canobie Watershed Protection District
Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance, to allow a dwelling to be constructed on a lot with 7,500 sq. ft. where a minimum 50,000 sq. ft. is required, frontage of 78 ft., where 175 ft. is required, 25 ft. front setback, where 50 ft. is required, a 9 ft. east setback where 30 ft. is required and a 16 ft. west side setback, where 30 ft. is required.

Ms. Skinner read the case and abutters list into the record.

Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

Mr. Maynard reviewed the application. The property is across the street from Cobbett's Pond. There is an existing 900 sq. ft. house with detached shed, on site septic, that utilizes a community well. The proposal is to put a new home on the property. They are favoring the east side of the property because of where the ROW is and it allows the new home to look down the driveway and get a better view of the water. They will also install a new septic system and private well. They currently have just over 22% of impervious coverage and are proposing 29.1%.

Mr. Breton noted it would make the shed more non-conforming. Mr. Maynard stated they would correct that and meet the requirements.

Mr. Maynard read the five points into the record.

Donald Flored – 17 York Road

He thinks it is great. It would be an improvement and would like to see the project move forward.

Ms. Skinner read a letter from the Conservation Commission, which stated they have no issues with the plan.

MOTION: Mr. Breton made a motion to go into deliberative.

Mr. Scholz seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel sees it as an improvement and has no issues with the project.

Mr. Partington reviewed the five criteria and believes the plan is reasonable and meets all five criteria. Mr. Breton, Mr. Scholz and Ms. Skinner agreed.

MOTION: Mr. Partington made a motion to grant the variance from Section 702, App. A-1 of the Windham Zoning Ordinance, to allow a dwelling to be constructed on a lot with 7,500 sq. ft. where a minimum 50,000 sq. ft. is required, frontage of 78 ft., where 175 ft. is required, 25 ft. front setback, where 50 ft. is required, a 9 ft. east setback where 30 ft. is required and a 16 ft. west side setback, where 30 ft. is required, as plans submitted.

Mr. Breton seconded the motion.

No discussion

Vote 5-0

Motion carries.

Chairman Samsel reminded the applicant there is a 30-day appeal period.

Five minute recess at 9:12

Lot 11-A-570 & 580, Case # 19-2016

Applicant-Joseph Maynard

Owner-Mesiti Indian Rock Road LLC & Windham Lowell Road Development, LLC

Location-1 North Lowell Road

Zoning District-Village Center District

Variance relief is requested from **Section 612.2.1** of the Windham Zoning Ordinance to allow single-family dwellings in the Village Center District, which is not allowed.

Ms. Skinner read the case and abutters list into the record.

Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

Mr. Maynard reviewed the proposed project. There are two properties that are being merged into an 18.45-acre property. It is directly behind the town hall and accessed through Eastwood Road. There is over 100' of elevation difference between Eastwood and North Lowell Roads. To make a physical connection from North Lowell Road, there would have to be a lot of site work. They reviewed several options for the property including apartment buildings, but the grades of the lot are not suitable for that. The proposed plan is for 37 detached dwelling units. They don't have large footprints so they don't have to level the site to create pads. The proposed lots minimize cuts and fill along the slope. They are choosing not to go multi-family because of amount of site work required. The site would have walking trails and sidewalks; the district requires both.

Mr. Scholz questioned if there was a future commercial lot. Mr. Maynard noted they are supposed to have a commercial component to the lot in that district, they set aside a small area for that, but there is no way to access it. On the plans they indicated a yellow area where a future roundabout will go. They want to wait and see what will happen with that before they develop the commercial lot.

Chairman Samsel confirmed the sidewalks would be paved. Mr. Maynard stated they would be.

Chairman Samsel questioned how they would control some of the permitted uses that are allowed in

that district that may not be appropriate in that kind of development (e.g., funeral home). Mr. Maynard explained that there wouldn't be access from Lowell Road for retail or commercial structures. The access is through a stub off Eastwood Road. Chairman Samsel questioned if the road would be the same if there were apartment buildings instead. Mr. Maynard confirmed it would be the same.

Mr. Maynard read the five criteria into the record.

Mr. Scholz questioned if the alternative would be duplexes. Mr. Maynard noted the bigger the unit, the bigger the footprint and the more site work he has to do with the grade; smaller footprint buildings can be stepped as he goes down the hill and disturb less.

Mr. Scholz questioned how many bedrooms there would be total. Mr. Maynard noted that every time you change something, the calculations change, but approximately half of the homes would be 3-bedroom, 2,500 sq. ft. homes.

Chairman Samsel stated he understood the hardship, but was trying to weigh the purpose of the district; how can the spirit of the ordinance be maintained. Mr. Maynard noted other developers in the district were going with more commercial. They wrote the ordinance without taking into consideration the terrain. The property doesn't have a lot of exposure of Rt. 111, so they don't have a commercial component.

Chairman Samsel questioned if they would exclude certain uses through a homeowners association. Mr. Maynard confirmed they would.

Mr. Maynard noted they would subdivide the portion on Rt. 111 to be developed as commercial once they find out what is going to happen with the rotary. They may even give that land to the town to accomplish the road improvements.

Travis Wilkens, Eastwood Road

He abuts the property. Mr. Wilkens expressed concerns about the change in character. Eastwood Road currently has six houses on a cul-de-sac and they are proposing opening that up and putting in 37 units at the end of their road. The increased traffic and people will change the character of their community. It seems very dense for their neighborhood. He hoped there could be discussion between homeowners and the developer. He also had concerns about the level of resources (e.g., water) to support the homes.

Chairman Samsel reminded Mr. Wilkens that the town has an easement of Eastwood Road, which typically means something will happen and it will connect at some point. If they wanted to build apartments or commercial property, they wouldn't need a variance.

Mr. Breton noted if they were to put in three apartment buildings, they would have to devastate the property; they are trying not to do that.

Mr. Wilkens stated again that he has concerns with the number of units through his road. It will change the current character. Mr. Samsel reminded him that it could be even denser.

Mr. Scholz noted the engineer mentioned the soils would support three apartment units with 24 units, each having 2 bedrooms. That would be 72 units, supporting 144 bedrooms. This proposal is half the number of units. There is the potential for more traffic volume and more density.

Mr. Wilkens noted he's looking at it from a ratio perspective and it seems really out of proportion. He was unaware that the potential for the road existed. Chairman Samsel noted unfortunately, it is allowed and they need to understand what they are buying and what's surrounding them.

Michael Herst – 3 Eastwood Road

He was in town for the village district vote and throughout all the discussions. His recollection was that there was a horizontal plan that avoided the steep embankment. The connection off Eastwood Road was supposed to be for emergency access for fire and police. The cul-de-sac did exist and the town owned the ROW. They discussed how they would restrict that access with a gate and not channel the village district through that neighborhood.

Chairman Samsel noted that plans at that time were just conceptual.

Mary Bahal – 5 Eastwood Road

She was very active with the village district to get people to vote against it. At that time they wanted to put in commercial restaurants behind her house. They were told the ROW would only be used for emergency vehicles or a walkway. She has always been against the village district and was concerned about commercial going in there. She has concerns about property values, how densely populated it will be and the traffic.

Tom Case

When the village center district was first established, they didn't realize what could be happening now. What they had in the original plan was 20% residential, 60% commercial. Each project had to have that ratio of commercial vs. residential but somewhere along the line they decided to remove that ratio.

Roger Hohenberger

The town voted not to have single-family homes in this zone. His conception of the district was Newburyport, nice shops with apartments above it. He understands the planning board wanted to change the regulations because it wasn't being developed, but a board of five should not determine what is in the best interest of the town, when the town voted for the village district. This is not in the spirit and intent of the ordinance.

Rick Welch

Mr. Welch is helping design the development. They were close to moving forward with the apartments. Their idea was to have a nicer looking property. He understands the concern about increased traffic, but this project is night and day from what they can actually do. They build communities with a lot of open space and create nice communities. They will have streetlights and walking trails; each home will be slightly different. This route is a lot of extra work, but the ultimate result will be much nicer.

Letter from Jonathan F. Sycamore expressing concern with the project.

Letter from Tracey Partington expressing concern with the project. Ms. Partington's letter spoke of support from Rockingham Planning Commission (RPC). Chairman Samsel noted he is a member of

RPC and the Southern NH Planning Commission. He doesn't remember support of the planning commission. They didn't support it nor oppose it; they were neutral.

Mr. Breton confirmed that Tracey Partington was Mr. Partington's wife and thought the board should know for transparency. The rest of the board had no issue with that.

Mr. Maynard noted they could do duplexes or apartments; the intent is to allow residential development just in a multi-family building. That doesn't work on this property.

Sue Mesiti - 7 Ironwood Road

Ms. Mesiti does recall the discussions about the village district and she always expressed concern that Windham is not Newburyport. People leave Boston so they can have trees in their yard, not so they can live above a pizza shop. She has over 30 years of experience as a realtor. They need density in the district to shop and support the businesses. They are fulfilling that density and walkability to the commercial area. She thought what they were doing was wonderful.

Chairman Samsel asked Ms. Mesiti to reflect on the two levels of density—apartments vs. single-family homes. Ms. Mesiti questioned if they would rather have the look of apartments or nice single-family homes to get the density. Isn't it up to the developer and the other boards to determine what will be the most marketable in our town? If they are denied the variance, they will go back to the duplexes.

Chairman Samsel questioned if the other access points were totally out of the picture. Mr. Maynard noted they would need grading easements if they tried to go through the town hall. Trying to make a connection from Lowell Road would require deeper cuts to weave a road into the grade. They would have to involve the town to make the connection from Lowell Road because it would have to go on the ballot.

Mr. Breton noted the road would be the same with duplexes or apartment buildings.

Mr. Scholz noted that with 74 apartments at 8 trips per day it would be 560 trips. 37 single-family units average 10 trips per day, which is 370 trips—far less.

Mr. Gregory reminded everyone that duplexes are not allowed, just multi-family which are three or more units.

Michael Hearst

They have never had any kind of contact from this group about their proposals. They've had no communications about what would or wouldn't work. The exit road was never considered a primary access road.

Mary Bahal

They have never had any communication either. She hopes they have done a traffic study to see how it would impact the road.

MOTION: Ms. Skinner made a motion to go into deliberative.

Mr. Bretton seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel noted they heard a lot of testimony and history.

Mr. Partington noted that the abutters should be careful what they wish for. This might be the least offensive plan. They are next to a mixed-use district that allows great density and very few setbacks. Ms. Mesiti made very good points. The village center purpose was to create a walkable center that would enhance the quality of life in the town. Whether we agree with that, the town voted it in.

Mr. Breton noted that the way the ordinance reads, it has all the components. They can put residential in here; it is just a matter of the type. Is this type less intrusive to the neighborhood? The road is going to be there no matter what they put in there. He's trying not to devastate the land.

Chairman Samsel questioned how this project enhances the quality of life in town with the mixed-use center. We are weighing in against what could be.

Ms. Skinner noted they are looking at all the components of the district, but history is supposed to be a component. It was sold to the town that they could save the historic homes that were there, but they are all gone. They are missing a large component of the district.

Mr. Partington reviewed the five points.

1., 2., He feels it is contrary to the public interest and does not uphold the spirit of the ordinance and the essential character of the area. It is not mixed use and not walkable, it doesn't enhance the quality of life in town and goes against the master plan. With big apartment units you could put businesses in there.

Mr. Scholz agreed. He understands the impact to the property, but doesn't feel they meet the criteria for 1 and 2. He would much rather see this than the alternate plan, but it doesn't meet the spirit of the ordinance.

Mr. Breton is weighing what they want the residential component to look like. He does not feel it will enhance the area and doesn't want to see the land devastated. It is less intrusive and a much better fit. Community-wise, this is a better way to get the residential component.

Chairman Samsel noted it is a challenge because everyone's vision for the district is different. It is not contrary to the public interest because it follows the purpose of the district. Any project will impact the neighborhood.

Ms. Skinner agrees with Mr. Partington.

3. Substantial justice:

Mr. Partington and Mr. Scholz did not feel it met substantial justice. Mr. Breton felt it did meet substantial justice. Chairman Samsel was on the fence.

4. Values not diminished:

Mr. Breton felt any other type of residential structure would devalue abutter's properties. Mr. Scholz did not feel this has been met because he does not see any evidence that values would be diminished. Chairman Samsel did not feel it would diminish the value. Mr. Partington did not

believe the homes would diminish the values, but the traffic might. Ms. Skinner felt the amount of traffic could diminish property values.

5. Hardship:

Mr. Partington felt it did meet this. Mr. Scholz felt it met this criteria because of the topography and felt it is reasonable because it's a lot less density vs. what could be there. Mr. Breton and Ms. Skinner agree.

MOTION: Mr. Scholz made a motion to deny relief from Section 612.2.1 of the Windham Zoning Ordinance to allow single-family dwellings in the Village Center District, which is not allowed as requested.

Mr. Partington seconded the motion

No discussion

Vote 4-1

Motion carries

Chairman Samsel noted it was 1 and 2 that they didn't meeting

Mr. Scholz noted it was 1-4 that they did not meet

Mr. Partington noted it was 1-4 that they did not meet.

Mr. Breton stepped down and Mr. Mazalewski

Lot 17-J-142, Case # 20-2016

Applicant-Joseph Maynard

Owner-Shawn & Ashley Thrasher

Location-19 Gardner Road

Zoning District-Residence A, Cobbett's Pond & Canobie Lake Watershed Protection

Variance relief is requested from **Section 702, App. A-1** of the Windham Zoning Ordinance to allow a dwelling to be constructed on a 9,000 sq. ft. lot where the minimum lot size is 50,000 sq. ft., 74 ft. frontage where 175 ft. is required, 10 ft. front setback, where 50 ft. is required, 15 ft. west side setback where 30 ft. is required, 18 ft. east side setback where 30 ft. is required, 24 ft. lake setback where 50 ft. is required.

Ms. Skinner read the case and abutters list into the record.

Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

Mr. Maynard reviewed the project. It is an existing single-family home that is 23' from the edge of Cobbett's pond. A large chunk of the site has impervious coverage. There is a large concrete patio next to the house, driveway, and lots of other paved and gravel surfaces. There is a big utility pole at the corner. The wanted to move the home back further but they cannot move the utility pole anywhere else. The new house is up against the 10' setback; the face of the house is 33' from the water. The deck will be 24.5' from the water. The large concrete patio will be gone and a small patio will be constructed. Gardner Road is a private road. The small lot abutting is a community beach, not a building lot. A new septic system and well will be installed. The well sits under the driveway in order for separation from the septic and the septic will be under the patio. They will need to plant 80 or 90 trees to meet shoreland protection standards. To comply with shoreland protection there will be an area that will be planted as undisturbed. They will end up with 47% impervious coverage, which is a small reduction. It will meet all Cobbett's Pond requirements.

Chairman Samsel opened the hearing to the public.

Letter from Ken and Kelly Martineau, an abutter, expressed concern their view will be obstructed. Mr. Maynard submitted photos showing that there are a number of trees that obscure any view he has of the water. He has a filtered view from the corner of his house to the beach area.

Mr. Maynard read the five points into the record.

MOTION: Ms. Skinner made a motion to go into deliberative.

Mr. Partington seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel felt it met the five criteria. In regards to the letter from the abutter, he is happy with Mr. Maynard's response and the photos submitted.

Mr. Partington reviewed the five criteria and stated the plan is reasonable and met all five criteria. Mr. Scholz agreed.

Mr. Mazalewski noted it would have been nice to see a small reduction in coverage.

MOTION: Mr. Scholz made a motion to approve the variance from Section 702, App. A-1 of the Windham Zoning Ordinance to allow a dwelling to be constructed on a 9,000 sq. ft. lot where the minimum lot size is 50,000 sq. ft., 74 ft. frontage where 175 ft. is required, 10 ft. front setback, where 50 ft. is required, 15 ft. west side setback where 30 ft. is required, 18 ft. east side setback where 30 ft. is required, 24 ft. lake setback where 50 ft. is required per plan submitted.

Mr. Partington seconded the motion.

No discussion

Vote 5-0

Motion carries

Chairman Samsel reminded the applicant there is a 30-day appeal period.

Lot 17-J-104, Case # 21-2016

Applicant-Joseph Maynard

Owner-Roberts Family Trust

Location-15 Rocky Ridge Road

Zoning District-Residence A and Cobbett's Pond and Canobie Lake Watershed Protection District

Variance relief is requested from **Sections 200 & 603.1** of the Windham Zoning Ordinance to allow a garage to be constructed without a dwelling on the lot.

Ms. Skinner read the case and abutters list into the record.

Ms. Skinner read an authorization letter for Joseph Maynard to represent the applicant.

Mr. Maynard noted an application for the property was before the board last year. The owner would like to build a garage, but is not ready to build the home. The ordinance states they can't have an accessory structure without a primary dwelling. She would have built just enough to make it work, but the garage project turned into a huge project. Variances are good for two years and shoreline permits are only good for five years. She has to act quickly so she doesn't lose the opportunity to build the home close to the water.

Mr. Partington questioned what prevented him from building the garage. Mr. Maynard noted the permitting process prevents it. A building permit is only good for one year; they are trying to be upfront and realistic. They would prefer to not merge the lot with the abutting property she owns. She is trying to save the lot for one of her children.

Mr. Maynard read the five points into the record.

Chairman Samsel opened the hearing to public

Mr. Case

He was in favor of the project.

MOTION: Ms. Skinner made a motion to go into deliberative.

Mr. Partington seconded the motion.

No discussion

Vote 5-0

Motion carries

Mr. Scholz did not feel it met the spirit of the ordinance. Mr. Partington didn't feel it met the hardship criteria as well.

The board questioned if they needed to include a variance for section 200 and agreed they would specify "relative to accessory building or use."

Mr. Partington reviewed the five criteria.

- 1., 2. – Mr. Partington and Mr. Scholz did not feel it met spirit of the ordinance.
3. They are not aware of any negative impact on the public.
4. They do not feel it will diminish property values.
5. They do not feel there is any hardship.

MOTION: Mr. Scholz made a motion to deny the variance requested from Sections 200 & 603.1 of the Windham Zoning Ordinance to allow a garage to be constructed without a dwelling on the lot.

Mr. Partington seconded the motion

No discussion

Vote 5-0

Motion carries

Mr. Scholz felt it did not meet criteria 1, 2, 5.

Chairman Samsel reminded the applicant there is a 30-day appeal period.

678 **MOTION: Mr. Partington made a motion to adjourn at 12:09 a.m. Mr. Scholz seconded the**
679 **motion.**
680 **Vote 5-0-0.**
681 **Motion passes.**
682
683 **Submitted by Andrea Cairns**